

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
Petition for a Certificate of Public Convenience and)	
Necessity, pursuant to Section 8-406.1 of the Illinois Public)	
Utilities Act, and an Order pursuant to Section 8-503 of the)	
Public Utilities Act, to Construct, Operate and Maintain a)	Docket No. 12-0598
New High Voltage Electric Service Line and Related)	
Facilities in the Counties of Adams, Brown, Cass,)	
Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon,)	
Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler,)	
Scott and Shelby, Illinois.)	

**AMEREN TRANSMISSION COMPANY OF ILLINOIS' RESPONSE
IN OPPOSITION TO ADAMS COUNTY PROPERTY OWNERS AND TENANT
FARMERS' MOTION TO STRIKE PORTION OF REBUTTAL TESTIMONY OF
DONELL MURPHY AND FOR AN EXPEDITED RULING**

Ameren Transmission Company of Illinois ("ATXI") respectfully submits this response in opposition to Adams County Property Owners and Tenant Farmers' ("ACPO") motion to strike a portion of ATXI witness Ms. Donell Murphy's Rebuttal Testimony.

ACPO seeks to strike two sentences from Ms. Murphy's Rebuttal Testimony as "inadmissible hearsay" or "because it is speculative": "Additionally, as identified in my direct testimony, ATXI Exhibit 4.0, ATXI did respond to questions from interested property owners during the public meetings conducted by ATXI. Therefore, I believe that all the potential property owners associated with possible connection routes have been made aware that additional connections are possible as a result of this proceeding." (ATXI Ex. 13.0, p. 6.) The statements ACPO seeks to strike from Ms. Murphy's testimony are not hearsay and are admissible. ACPO's motion should be denied.

The Statements Are Not Hearsay

Despite ACPO's lengthy recitation of hearsay law, ACPO fails to apply the basic definition of hearsay to the statements it seeks to strike. Instead, ACPO contends that these statements are inadmissible hearsay because Ms. Murphy "was not present during all communications" with landowners at public meetings, and because Ms. Murphy "lacks personal knowledge" as to whether landowners have been made aware of the possible additional connections. (ACPO Motion to Strike Portion of Reb. Test. of Donell Murphy and for an Expedited Ruling, p. 4 (hereinafter "ACPO Motion").) These factors are not determinative of whether a statement is hearsay.

Hearsay is a statement, "other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c). In order to qualify as hearsay, a witness must offer testimony regarding a specific statement made outside of the hearing, for the purpose of proving that the contents of that statement are true.

The Illinois Supreme Court has long recognized a distinction between admissible testimony and inadmissible hearsay, which is "well illustrated by [the] example of the witness A testifying that 'B told me that event X occurred.' If A's testimony is offered for the purpose of establishing that B said this, it is clearly admissible – if offered to prove that event X occurred, it is clearly inadmissible," because it is hearsay. *People v. Carpenter*, 28 Ill. 2d 116, 121 (1963) (citing Wigmore on Evidence, 3d Ed. § 1361).

Ms. Murphy's statement "ATXI did respond to questions from interested property owners during the public meetings conducted by ATXI" is offered for the purpose of establishing the *fact* that ATXI responded to certain questions. It is not offered to prove the *content* of the

questions or the responses provided. As such, under *Carpenter*, it is not hearsay and is “clearly admissible.” *Id.*

Ms. Murphy’s statement “Therefore, I believe that all the potential property owners associated with possible connection routes have been made aware that additional connections are possible as a result of this proceeding” is a statement of Ms. Murphy’s opinion. Because this statement is taken directly from her Rebuttal Testimony, Ms. Murphy has stated her opinion “while testifying.” *See* Ill R. Evid. 801(c). As such, it is not an out-of-court statement and cannot satisfy the basic definition of hearsay. *See id.* (defining hearsay as a statement “*other* than one made by the declarant while testifying”) (emphasis added). Ms. Murphy is available for cross-examination regarding the basis of this opinion. *See, e.g., People v. Peoples*, 377 Ill. App. 3d 978, 983 (1st Dist. 2007) (noting that hearsay is excluded from evidence primarily because it does not provide an opportunity to cross-examine the declarant).

ACPO provides no support for its contentions that ATXI is “seek[ing] to preclude” or “attempting to deprive” ACPO of the opportunity to conduct cross-examination. On the contrary, Ms. Murphy will be available for cross-examination as to the basis for her statements, as is required by the Illinois Rules of Evidence.

Even if there were validity to ACPO’s contentions that Ms. Murphy’s testimony was hearsay, ACPO’s arguments fail to recognize that Ms. Murphy is providing expert testimony. An expert witness, unlike a lay witness, may testify “in the form of an opinion or otherwise.” Ill. R. Evid. 702. “The facts or data ... upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.” Ill. R. Evid. 703. Indeed, the expert

testimony “may be based on data presented to the expert outside of court and other than by [her] own perception.” *J.L. Simmons Co. ex rel. Hartford Ins. Group v. Firestone Tire & Rubber Co.*, 108 Ill. 2d 106, 117 (1985).

As an expert in routing analysis, Ms. Murphy reasonably relied upon certain facts and data to reach her understanding that questions from the public were responded to, and her opinion that property owners associated with possible connection routes had been made aware that connection is a possibility. Her understanding and opinions are admissible regardless of whether the facts and data upon which her understanding and opinion are based are admissible, or whether she was personally present or had personal knowledge of such facts and data. *See People v. Lovejoy*, 235 Ill. 2d 97, 142 (2009).

The Statements Are Not Speculative

ACPO contends that Ms. Murphy’s statements are speculative because she “lacks personal, first-hand knowledge regarding the proposition on which she is testifying.” (ACPO Motion at 5.) But in fact Ms. Murphy attended public meetings and would have personal knowledge of what occurred there. (ATXI Ex. 4.3, pp. 13-22.) Moreover, As discussed above, Ms. Murphy is an expert witness and may therefore testify to her opinions, which may be “based on data presented to the expert outside of court and other than by [her] own perception.” *J.L. Simmons Co. ex rel. Hartford Ins. Group*, 108 Ill. 2d. 117; *see also* Fed. R. Evid. 703, Advisory Committee Note. These statements are not speculation.

WHEREFORE, for the foregoing reasons, ATXI respectfully requests that ACPO’s Motion to Strike Portion of Rebuttal Testimony of Donell Murphy be denied.

Dated: May 6, 2013

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert Sturtevant

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CERTIFICATE OF SERVICE

I, Albert Sturtevant, an attorney, certify that on May 6, 2013, I caused a copy of the foregoing *Response in Opposition to Adams County Property Owners and Tenant Farmers' Motion to Strike Portion of Rebuttal Testimony of Donell Murphy and for an Expedited Ruling* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert Sturtevant

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